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EXAMINER				
WASAFF, JOHN SAMUEL				
ART UNIT		PAPER NUMBER		
3742				
NOTIFICATION DATE		DELIVERY MODE		
10/13/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary****Application No.**

10/584,377

**Applicant(s)**

VAN DEER MEER ET AL.

**Examiner**

JOHN WASAFF

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1,2,4-16 and 19-28 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1,2,4-16 and 19-28 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-CB00)  
Paper No(s) Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s) Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-9, 11-12, 14-16, 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fung (US Patent No. 6,289,796 B1) in view of Favre (US Patent No. 5,472,719).
3. In claims 1, 4, 9, 22, and 24, Fung shows a device for preparing a heated liquid using a beverage-making appliance, the device comprising: a reservoir (milk reservoir 10) that sealably holds a liquid; a chamber (chamber 23); a liquid transport channel (milk passage 21) in communication with the reservoir for transporting the liquid when the reservoir is unsealed to the chamber (via outlet valve 11); a steam inlet (outlet pipes 15, 16) which is connectable to a steam generator (steam generator 12) of the beverage making appliance for generating steam and heating the liquid flowing out of the liquid transport channel to form the heated liquid; a liquid outlet (dispensing outlet 29) for outputting the heated liquid; a guide configured to transport a combined flow of at least the liquid and the steam to the liquid outlet (collection chamber 28); and a cartridge in which the reservoir, the liquid transport channel, the means for transporting, and the liquid outlet are provided (Fig. 1 shows "cartridge unit").

Fung fails to teach: the reservoir holding a liquid in sealed foil; a liquid coffee extract; the reservoir comprises a sealed foil which is pierceable by a protrusion of a cover of the beverage-

making appliance when the cover is closed over the cartridge. Fung also fails to teach the cartridge being detachably connected to the device and disposable after use (N.B. that the cartridge being disposable adds little patentable weight to claim, since almost anything can be disposed of after use).

Favre teaches a sealed unit that contains ground coffee and/or liquid extract and is pierced by a piercing device when in the unit is contained in a coffee machine (see col. 5, ln. 30-35; col. 6, ln. 40-50 of Favre).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fung to include the features of Favre. The motivation is for a sealed cartridge that maintains freshness of the products contained within the capsule.

Further, since Fung already shows the reservoir, liquid transport channel, guide, and liquid outlet provided in a single unit, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the unit detachable from the device and disposable after use. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin vs. Erlichman*, 168 USPQ 177, 179.

4. In claim 2, Fung shows the guide comprises a further chamber (chambers 25), wherein the liquid transport channel discharges into the chamber (milk passage 21 connects to side of chamber 23; see col. 2, ln. 25-30) and the chamber comprises the steam inlet (nozzle 17 into chamber 23; see Fig. 1) and wherein the further chamber is connected to the chamber via a restriction and comprises the liquid outlet (second chamber 25 connected to first chamber 23 via a restricting aperture 24; see Fig. 1).

5. In claim 5, Fung shows the liquid transport channel comprises an air inlet (unmarked entry point into milk passage 21 defines an air inlet into milk channel).
6. In claims 6 and 7, Fung shows the air inlet is closable, a valve is provided for opening and closing the air inlet (outlet valve 11 controls entry into milk passage 21 and has a knob for opening and closing the inlet; see Fig. 1).
7. In claim 8, Fung shows the liquid comprises milk (milk reservoir 10; see col. 2, ln. 15-20).
8. In claim 11, Fung shows at least the further chamber is provided with obstructions for enhancing frothing of liquid in the further chamber during operation (plate 27 acts as obstruction device for frothing of liquid in chamber 25; see col. 2, ln. 30-35).
9. In claim 12, Fung shows the liquid reservoir is a refillable reservoir (milk reservoir 10 has open top adapted for refilling; see Fig. 1).
10. In claim 14, Fung shows the appliance comprises a space for receiving the device for preparing a heated liquid (Fung teaches hot milk machine that is incorporated, i.e., received, into coffee maker appliance; see col. 1, ln. 7-12).
11. In claim 15, Fung shows the appliance comprises the steam generator which is connectable to the steam inlet of the device upon receipt of the device in the space (steam generator 12).
12. In claim 16, Fung shows the appliance comprises means for opening a liquid flow path between the reservoir and the liquid channel (selector knob 14).
13. In claim 19, Fung shows the reservoir is unsealed in response to providing the device in beverage-making appliance (milk reservoir 10 unsealed via valve 11; Fig. 1).

14. In claim 20, Fung shows an air inlet (top of chamber 23) connectable to an air socket (flexible hose 19) of the beverage-making appliance for providing air to form the liquid from the reservoir with froth, wherein the air inlet is connected to the liquid transport channel via a first restriction (top of channel above chamber 23 defines first restriction); and wherein the chamber (chamber 23) is configured to receive the steam from the steam generator of the beverage-making appliance and the liquid from the reservoir including the froth to form the heated liquid with the froth in the chamber and providing the heated liquid with the froth to a further chamber (chamber 25) via a second restriction (aperture 24) to enhance the froth, wherein the liquid outlet is connected to the further chamber for output of the heated liquid with the froth.

15. In claim 21, Fung shows an air inlet connectable to an air socket (top of chamber 23) of the beverage-making appliance for providing air to form the liquid from the reservoir with froth; wherein the chamber (chamber 23) is configured to receive the steam from the steam generator of the beverage-making appliance and the liquid from the reservoir including the froth to form the heated liquid with the froth in the chamber and output the heated liquid with the froth through the liquid outlet of the device (Fig. 1).

16. In claim 23, Fung shows the reservoir is unsealed in response to providing the device in the beverage-making appliance (valve 11).

17. In claim 25, Fung shows the cartridge is a single use cartridge for discarding after a single use of preparing the heated liquid by the beverage-making appliance (depending on user, Fung's dispenser might be single or multiple use).

18. In claim 26, Fung shows the liquid present in the reservoir does not come into contact with the beverage-making appliance (liquid sealed in reservoir 10; Fig. 1).

19. In claims 27 and 28, Fung shows the liquid outlet of the cartridge outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance (heated liquid capable of entering cup; Fig. 1).

20. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fung and Favre, and further in view of Gross (US Patent No. 5,862,740).

21. Fung and Favre teach all the features as described above, including an inlet to the chamber (aperture 22). Fung and Favre fail to teach the chamber comprises a water inlet which is connectable to a water reservoir.

Grossi teaches a device for frothing that uses a water inlet connected to a source of a supply of water, i.e., a reservoir, to supply water to the chamber (see col. 3, ln. 15-25 of Grossi).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Fung and Favre with Grossi, in order to provide a water inlet for the easy cleaning of the device (see col. 3, ln. 15-25 of Grossi).

22. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fung and Favre, and further in view of Rizzuto et al. (US Patent No. 5,473,972).

23. Fung and Favre teach all the features as described above. Fung and Favre fail to teach the liquid reservoir is provided in an element which is moveable between a first position in which it covers the liquid transport channel, the chamber, the steam inlet, the restriction, the further chamber, and the liquid outlet during operation and a second position in which it leaves these components exposed for cleaning purposes in a non-operating status.

Rizzuto teaches a milk container attachment for a cappuccino machine that has an element moveable between a first position, in which it covers the parts below, and a second position, in which the parts below are exposed and able to be cleaned (Fig. 2 of Rizzuto shows a perspective of the milk container with the top partially removed).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fung and Favre to include the feature of the moveable element, as taught by Rizzuto. The motivation is for reservoir that can be easily removed and cleaned (see col. 1, ln. 15-20 of Rizzuto).

#### ***Response to Arguments***

24. Applicant's arguments with respect to claims above have been considered but are not persuasive. Applicant argues on p. 9 of remarks (applicant's numbering) that Fung and Favre fail to show the cartridge unit. Examiner disagrees. It is examiner's opinion that Fung and Favre show all the required pieces that together define a cartridge unit. While Fung and Favre might not have explicitly shown the cartridge being detachable, it is examiner's opinion that modifying the combination to include such a feature is well known in the art (see rejection above). On pp. 10-11, applicant repeats arguments from above. Examiner maintains the position that Fung and Favre show all the required pieces that together define a cartridge unit (see rejection above). Regarding the newly added limitations in claims 27, 28, it is examiner's opinion that Fung and Favre, like most heated liquid makers, are capable of producing a heated liquid that outputs directly into a cup (where else would the liquid be directed?). Examiner notes that the limitation "so that the liquid present in the reservoir does not come into contact with the beverage-making



appliance" does little to add patentable weight to the claim, since such a limitation does not add any structural features that define over the art of record. For these reasons, applicant's arguments are not persuasive.

### *Conclusion*

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN WASAFF whose telephone number is (571)270-1283. The examiner can normally be reached on Monday through Friday, 8:30am to 6:00pm, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN WASAFF/  
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10/03/11

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3742